IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION NO : 18035 of 2002

Between:

Geological Survey of India, Ministry of Coal & Mines, Government of India, rep. By its Director K.P. Reddy, O/o Deputy DirectorGeneral, Southern Region, Bandlaguda, GSI Complex, Hyderabad.

..... PETITIONER

AND

1. Sri Raju Varghese, Ex. Employee of Geological Survey of India, Southern Region, Rep. By General Secretary, GSI Employees Associastion (Regn.No.822), GSIComplex, Bandlaguda, Hyderabad.

2. Controlling Authority under Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central), ATI Campus, Vidyanagar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased t o call for the records and quash the order dated 31.07.202 made in C.A.No.48/2/2000-E3/E4 and E5 and FORM-R thereon, issued by the Controlling Authority under the Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central), Hyderabad, the 2nd respondent herein, by issuing a writ of “CERTIORARI” or any other appropriate writ or order or direction as this Hon’ble Court may deem fir and proper in the circumstances of the case and to allow this writ petition with costs.

Counsel for the Petitioner:DR.P.BHASKARA MOHAN

Counsel for the Respondent No.1: MR.V.JAGAPATHI

Counsel for Respondent NO.2 : -----

The Court made the following ORDER:

The learned counsel for the petitioner submitted his arguments on the last date of hearing. On that day, there was no representation on behalf of the respondents. Therefore, to afford an opportunity, the writ petition was adjourned to today.

The counsel appearing on behalf of the learned counsel for the respondents requested to pass over the matter. Today being Friday, this Court will be busy with the hearing of second appeals and revision petitions. As the learned counsel for the respondents is not evincing any interest in prosecuting the matter, this Court is not inclined to keep the same pending.

Perused the record.

To quash the order, dated 31.07.2002, in C.A.No.48/2/2000-E3/E4 and E5 issued by the Controlling Authority under the Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central), Hyderabad, the second respondent herein, the writ petition has been filed.

The petitioner challenges the order impugned mainly on the ground that the second respondent has no jurisdiction to pass the order under Section 7 of the Payment of Gratuity Act, 1972 (for short 'the Act'), since the first respondent is a Central Government employee and he does not come under the definition of 'employee' as provided for under Section 2(e) of the Act.

The learned counsel for the petitioner vehemently contended that Section 2(e) completely excludes the State and Central Government employees from the purview of the Act, and therefore, the second respondent has no authority to award any gratuity under the Act. He further contended that the first respondent has already received the gratuity payable to him under the CCA Rules, and hence, the impugned proceedings are liable to be set aside.

The short question that falls for consideration is whether the first respondent is covered by the provisions of the Act.

In the counter-affidavit, the first respondent stated that his services were regularized on 01.05.2000, as Messenger, in the cadre of Group D, after completion of 23 years. The petitioner is a subordinate office under the Ministry of Mines, which is a premier national organization on Earth Sciences providing basic geo-science information for the development of mineral, energy and water resources, management of natural hazards due to earthquakes, floods, landslides, volcanism and the protection of environment, surface and subsurface etc. It is a Central Government Organization. When the first respondent was regularized in the cadre of Group D, he has to be treated as the employee of the central Government. Therefore, he is bound by the CCA rules. Section 2(e) of the Act excludes the employees of the State and Central Government from the purview of the Act. It reads as under:

> "employee" means any person (other than an apprentice) employed on wages, not exceeding (two thousand and five hundred rupees per mensem, or such higher amount as the Central Government may, having regards to the general level of wages, by notification specify), in any establishment, factory, mine, oil field, plantation, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied (and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity)"

A reading of Section 2(e) makes it clear that the 'employee' does not include any person who holds a post under the Central Government or State

Government and is governed by any of the Act. It is an admitted fact that the first respondent received the amount of gratuity under the CCA Rules. Though the gratuity amount calculated under the Act gives more advantage to the first respondent, he cannot avail the same, in view of the fact that he is a central Government employee. The learned junior counsel makes a vain attempt that an appeal is provided for against the order of the second respondent.

For the foregoing reasons, this Court is of the view that the first respondent does not come under the purview of the Act and hence he is not entitled to receive the gratuity under the Act.

The writ petition is accordingly allowed and the proceedings of the second respondent are hereby quashed. It is submitted that in pursuance of the orders of this Court, the petitioner has deposited the amount of gratuity before the second respondent. The petitioner is entitled to receive the same by filing necessary application before the second respondent. On such application being filed, the second respondent shall refund the amount to the petitioner. There shall be no order as to costs.

24.06.2005

ksld

That Rule Nisi has been made absolute as above.

Witness the Hon'ble HACJ, Bilal Nazki, the Chief Justice on this Friday the Twenty Fourth of June Two thousand and Five.

Asst. Registrar.

To

1 Controlling Authority under Payment of Gratuity Act, 1972 and

Assistant Labour Commissioner (Central), ATI Campus, Vidyanagar,

Hyderabad.

2 2 CD copies

3 1 CC to DR.BHASKARA MOHAN

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